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Letter dated 28 March 2008 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit herewith the tenth report of the International Independent Investigation Commission, which was prepared pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005) 1686 (2006) and 1748 (2007).

The report provides the Security Council with an overview of the progress made by the Commission since its previous report to the Council, dated 28 November 2007 (S/2007/684). While the Commission continues to make progress, it underlines the complexity of the investigation, mindful of the need to carry out an effective handover to the Special Tribunal for Lebanon.

The Commission reports that it has evidence that a network of individuals acted in concert to carry out the assassination of former Prime Minister Rafiq Hariri and that this criminal network, or parts thereof, are linked to some of the other cases within the Commission's mandate. The priority of the Commission is now to determine the scope of the network and the identity of its participants. The report also provides details of the assistance provided by the Commission to the Lebanese authorities in their investigation of 20 other bombings and assassinations in Lebanon since October 2004.

I wish to thank the staff of the Commission for their excellent work in extremely difficult circumstances. In particular, I wish to thank Daniel Bellemare, who took office as Commissioner on 1 January 2008, for his leadership in advancing the investigation and in providing continuity in the work of the Commission. I also would like to thank the Government of Lebanon for its continued cooperation and support.

I would be grateful if you would bring this matter to the attention of the members of the Security Council. Meanwhile, I am transmitting the report to the Government of Lebanon.

(*Signed*) **Ban** Ki-moon

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Tenth report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007)

Beirut, March 2008

D. A. Bellemare
Commissioner

Summary

The Security Council requested the International Independent Investigation Commission to report to it every four months on its progress. This report is the tenth provided by the Commission to date, and the first report of Commissioner D. A. Bellemare, who took office on 1 January 2008.

The present report provides an update on the progress of the investigation, with due consideration given to confidentiality and security concerns. The progress made during the reporting period allows the Commission to confirm, on the basis of available evidence, that a network of individuals acted in concert to carry out the assassination of former Prime Minister Rafiq Hariri and that this criminal network or parts thereof are linked to some of the other cases within the Commission's mandate. The Commission's priority is now to gather more evidence about this network and the extent of its links to other attacks.

Since the previous report, the Commission has provided technical assistance to the Lebanese authorities in their investigations into two additional attacks targeting members of Lebanon's security forces, Major General François al-Hajj and Major Wissam Eid.

Those recent attacks have contributed to a deteriorating security environment in Lebanon. Despite mitigating measures put in place, this environment continues to have an impact on the Commission's activities, albeit without affecting its resolve.

The Commission has continued to work closely with the Lebanese authorities. The Syrian Arab Republic has provided generally satisfactory cooperation. The Commission has implemented new working practices to foster additional assistance from Member States as well as to encourage cooperation by witnesses and other sources.

The Commission has also continued to prepare for the transition to the Special Tribunal for Lebanon, bearing in mind that terrorist investigations are lengthy and complex.

I. Introduction

1. The present report of the International Independent Investigation Commission established pursuant to Security Council resolutions 1595 (2005), 1636 (2005), 1644 (2005), 1686 (2006) and 1748 (2007), outlines progress made by the Commission since its previous report, dated 28 November 2007 (S/2007/684). This is the first report of Commissioner D. A. Bellemare, who took office on 1 January 2008.

2. The third anniversary of the terrorist attack that killed former Lebanese Prime Minister Rafiq Hariri and 22 other persons was observed on 14 February 2008. The Commission was established to assist the investigation into this attack, and its technical assistance has been sought in 20 other investigations, including 2 during the current reporting period. The investigations involve a series of terrorist attacks that have caused the death of dozens and injured hundreds more. In total, 61 people have been killed and at least 494 injured.

3. Terrorist investigations are by definition complex and difficult. The Commission faces additional challenges, including the magnitude of the attacks, their continuing nature and the fact that the investigations are conducted in an environment dominated by ongoing security concerns. Despite these difficulties, the Commission has continued its methodical approach in assisting the Lebanese authorities to solve the cases, being guided exclusively by the facts and the evidence and exploring all investigative leads.

4. Investigations of this complexity cannot be rushed. While the absence of quick results may be frustrating for the surviving victims, the families of the deceased, the Lebanese people, the international community and the Commission itself, the experience of other investigations of similar crimes proves that with sufficient time and resources, the perpetrators can be brought to justice.

5. Given the need to preserve confidentiality in its investigations, the Commission will not be disclosing any names. Names of individuals will appear only in future indictments filed by the Prosecutor, when there is sufficient evidence to do so.

6. The present report outlines the political and security environment in which the Commission operates; new developments in the Commission's work processes and investigative priorities; cooperation with national and international authorities; and challenges inherent in the Commission's work. Finally, the report addresses steps that the Commission is taking to prepare for the transition to the Special Tribunal for Lebanon.

II. The environment

7. The political situation in Lebanon remains at an impasse, despite numerous attempts to elect a successor to President Emile Lahoud, whose term expired in November 2007. Domestic and international efforts to resolve this crisis have so far been unsuccessful.

8. In the past four months, the Commission has witnessed a deteriorating security environment. A number of attacks targeted members of the Lebanese security forces and the international community. The political and economic conditions in the

country have also led to a number of street demonstrations that resulted in violent clashes and shootings.

9. On 12 December 2007, the head of operations of the Lebanese Armed Forces, Brigadier General François al-Hajj — posthumously promoted to Major General — and his driver were killed in a bomb attack that injured nine others. On 25 January 2008, the head of the technical section of the Information Branch of the Internal Security Forces, Captain Wissam Eid — posthumously promoted to Major — was killed in a similar type of explosion together with five other victims. Forty-two people were injured in this attack.

10. United Nations Interim Force in Lebanon troops were attacked, for the third time in the past nine months, on 8 January. A week later, on 15 January, three people were killed and others wounded by a roadside bomb that detonated as an American Embassy vehicle drove by.

11. This climate of insecurity has led embassies to take a number of measures to protect their citizens in Lebanon, including, in some cases, warnings to avoid travel to the country.

12. The Commission too has implemented measures to address security issues. However, continued attacks on Lebanese officials and members of the international and diplomatic community, violent demonstrations and sporadic clashes between rival factions, as well as ongoing tensions within Palestinian refugee camps, remain a concern and have affected the freedom of movement of Commission staff. The increasing violence has not, however, affected the Commission's resolve.

III. New developments

A. New practices

13. The Commission has accelerated the pace of its operations. Since it last reported, it has more than doubled the number of requests for assistance sent to Lebanon and other States, from 123 to 256.

14. The Commission has also developed new investigative priorities and reallocated resources to support them. It has drawn up a revised schedule of priority interviews and follow-up interviews and implemented new procedures to streamline the process.

15. To improve the response time for forensic results, the Commission has increased the number of international laboratories it has access to. It has also obtained ready access to information databases on wanted persons, individuals with criminal records, missing or deceased persons, stolen identification documents and motor vehicles, as well as DNA profiles and fingerprints.

B. Fostering assistance from States

16. While the Commission is independent, it cannot operate in a vacuum. Indeed, the Commission acts on behalf of Member States and its success depends on their timely and effective assistance.

17. The Commission demonstrated renewed flexibility in the way assistance could be provided by Member States. The Commissioner has met with ambassadors and other State representatives and offered a new approach to cooperation: rather than operating solely on the basis of specific requests for assistance, the Commission asked State representatives how they could support the Commission and informed them of generic areas of assistance that could match their capabilities and the Commission's requirements.

18. This new flexible approach has already yielded results. The Commission is grateful to those States that have come forward with expertise or are endeavouring to make resources available. The Commission has found that even when resources are provided on a short-term basis, they can still make an important contribution to its work. It therefore renews its call for assistance to all Member States.

C. Providing a secure environment for cooperation

19. The Commission is mindful of the essential role played by witnesses and confidential sources as its investigation progresses and of the importance of identifying individuals prepared to appear as witnesses in future trials.

20. As a result, the Commission has implemented measures to reinforce a secure cooperation environment for those individuals and to protect the information it receives. It has enhanced its systems to protect highly sensitive information shared by witnesses and other sources, and has implemented a witness protection strategy specifically adapted to the future requirements of the Tribunal and based on internationally recognized best practices.

IV. Progress in the investigations

21. Confidentiality is key to any investigation. In reporting, the Commission continues to respect its obligation to preserve the confidentiality of the investigation, both to avoid compromising investigative techniques and to protect people and evidence.

22. An overview of the progress of the investigation in the Hariri case and other cases within the mandate of the Commission is provided below. Factual findings made during the reporting period are referred to, with due consideration given to confidentiality and security concerns.

A. Hariri investigation

23. The investigation in the Hariri case continues to be active in all areas. Its work has covered forensic examinations, analysis and evidence-gathering, including 34 interviews, some of which have been complex and time-consuming.

24. In its previous report the Commission mentioned a hypothesis that operational links might exist between some of the possible perpetrators of the different crimes under investigation.

25. The Commission can now confirm, on the basis of available evidence, that a network of individuals acted in concert to carry out the assassination of Rafiq Hariri

and that this criminal network, the "Hariri network", or parts thereof, are linked to some of the other cases within the Commission's mandate.

26. The Commission has also gathered evidence establishing that: (a) the Hariri network existed before the assassination of Mr. Hariri; (b) it conducted surveillance of Mr. Hariri before the assassination; (c) it was operative on the day of his assassination; and (d) at least part of the Hariri network continued to exist and operate after the assassination.

27. The Commission's priority is now to gather more evidence about the Hariri network, its scope, the identity of all its participants, their links with others outside the network and their role in other attacks that have been found to be linked.

28. The Commission will also focus on identifying links between the Hariri network and the remaining attacks within the Commission's mandate and, where such links are found to exist, their nature and scope.

29. The Commission has also pursued its investigation into the identification of the suicide bomber in the Hariri case. It has compared forensic information described in previous reports on the origin, characteristics and movements of the bomber to entry and exit records as well as the missing persons files of various countries to generate leads on the possible identity of the bomber. On the basis of those leads, DNA profiling is being conducted to further assist in the identification.

B. Progress in other investigations

30. The Commission currently has a mandate to assist the Lebanese authorities in the investigation of 20 attacks other than the Hariri attack. Investigations in the other cases also support the Hariri investigation.

31. Since its previous report, the Commission has been requested by the Security Council to assist the Lebanese authorities in the investigation of the attacks targeting Major General al-Hajj and Major Eid. As a result, the Commission's mandate currently encompasses, in addition to the Hariri investigation, investigations into 2 types of attacks: 11 targeted attacks on politicians, journalists and security officials and 9 non-targeted attacks involving bombings in public places.

32. To date, the Commission has provided assistance in those other investigations in such areas as forensic analysis; conducting interviews; creating crime reconstructions and three-dimensional modelling of crime scenes; communications analysis; the development of timelines of victims' movements; the collection, enhancement and review of imagery material; and analysis of e-mail traffic. The Commission has also launched a project to create standardized computer-generated sketches relevant to the investigations.

33. The Commission is also continuing to investigate links between those cases and the Hariri case, and progress in this area is summarized above. During the reporting period, 58 interviews were conducted as part of the technical assistance provided to the Lebanese authorities in those cases, including the investigation of the links between them and the Hariri case.

34. The Commission has also examined all physical items found at the crime scenes of the targeted attacks, including licence plates and possible remains of

improvised explosive devices. Fifty-eight items are currently undergoing further forensic analysis (DNA evidence, fingerprints, explosives, toolmarks, paint and metal) at international laboratories, and reports comparing the results in each of the investigations with the results in the Hariri investigation will follow.

35. The Commission also temporarily redeployed resources to the two new cases to fully exploit the opportunity to collect fresh evidence from the crime scenes and to interview witnesses while they can still easily recall events.

C. Murder of Major General François al-Hajj

36. At 7.06 a.m. on Wednesday, 12 December 2007, a bomb placed in a parked car was detonated as the vehicle of Major General al-Hajj, the head of operations of the Lebanese Army, drove by, killing him and his driver. Two days later, the Commission was invited by the Security Council to provide technical assistance to the Lebanese authorities in the investigation of the attack.

37. International forensics experts working for the Commission conducted a week-long forensic examination of the crime scene in cooperation with the Lebanese authorities, as well as an investigation of the area surrounding Major General al-Hajj's residence. A total of 112 physical items were recovered, most of which are currently being analysed at an international laboratory.

38. Analysis is under way to confirm preliminary findings about the improvised explosive device and to determine the type and quantity of explosives used in the attack.

D. Murder of Major Wissam Eid

39. At 9.54 a.m. on Friday, 25 January 2008, an explosion in a busy area of Beirut targeted Major Eid, head of the technical section of the Lebanese Internal Security Forces Information Branch. Major Eid, his driver and four others were killed in the attack. Six days later, on 31 January, the Commission was invited by the Security Council to provide technical assistance in the investigation.

40. International forensics experts working for the Commission examined the crime scene for six days in cooperation with the Lebanese authorities. A total of 136 physical items were recovered, most of which are currently being analysed at an international laboratory.

41. Although the investigation into this attack is still at an early stage, the Commission has already been able to isolate relevant DNA profiles. Initial expert findings also indicate that the types of explosives used in this attack were TNT and RDX.

42. In addition to its forensic work, the Commission has conducted a series of interviews to establish Major Eid's routines and regular movements; his specific movements in the weeks prior to his death; and his professional profile, including the work he was conducting and the level of public knowledge of that work. Interviews have also focused on gathering observations from individuals present at the crime scene and in the surrounding area at relevant times.

43. In the new cases, the Commission is working on a profile of the targeted victim and possible motives for the attack. It is also investigating links with other targeted attacks, including the one that targeted Hariri.

V. Cooperation with national and international authorities

A. Lebanese authorities

44. The Commission continues to maintain regular contact and interact closely with the Lebanese authorities on matters related to its investigations, as well as on matters relating to the security of the Commission and its staff. The Commission continues to enjoy close and collegial cooperation with those authorities, which has consistently been noted in previous reports.

45. The Prosecutor General of Lebanon remains the main interlocutor of the Commission. The Commission continues to meet with him and his staff on an almost daily basis to follow up on the increasing number of requests for assistance submitted to him. The Commissioner has also held more frequent bilateral meetings with the Prosecutor General to keep him informed of the Commission's activities and progress.

46. The Commission also held meetings with the investigative judge for the Hariri case and made a detailed presentation of its forensic findings to the investigative judges in the al-Hajj and Eid cases.

47. As the investigation continues, the Commission shares with the competent Lebanese authorities the substance of all relevant information obtained, without compromising the source of that information, to enable them to make an independent assessment of the evidence acquired to date and to act in accordance with that assessment, including in relation to detention.

48. The Commission continues to be extremely grateful to the Lebanese security forces for their relentless and effective support and assistance in protecting the Commission's staff and premises, without which the Commission could not continue its work.

B. Syrian Arab Republic

49. Since its previous report, the Commission has submitted eight requests for assistance to the Syrian Arab Republic, which has continued to provide responses within appropriate time frames. The Syrian authorities have also, during the period, facilitated one mission to the Syrian Arab Republic.

50. The Commission acknowledges the logistical and security arrangements made by the Syrian authorities for its mission. The cooperation provided by the Syrian authorities continues to be generally satisfactory.

51. The Commission will continue to request the full cooperation of the Syrian Arab Republic in the discharge of its mandate.

C. Other States

52. Out of the 256 requests for assistance issued by the Commission during the reporting period, 28 were sent to 11 Member States other than Lebanon and the Syrian Arab Republic.

53. Member States responded positively to the Commission's requests, mostly within appropriate time frames. Timely responses to requests for assistance are crucial to the progress of the investigation.

VI. Challenges

54. In addition to the challenges inherent in the general political and security climate, other challenges must be overcome by the Commission in its day-to-day operations.

55. Over the years, a number of cases have been added to the Commission's mandate without a proportionate increase in resources, adding pressure to staff and their work; six new cases have been added since November 2006. The number of investigators and analysts continues to be far lower than in comparable investigations.

56. In addition, traditional methods of investigation need to be adapted to the current environment. For example, the close scrutiny of the movements of Commission investigators, combined with the security climate, can hinder their ability to operate discreetly. In addition, issues such as the language capabilities of witnesses and investigators, cultural differences and security concerns affect the conduct of interviews.

VII. Transition

A. The process

57. Following the adoption of Security Council resolution 1757 (2007) establishing the Special Tribunal for Lebanon, and consistent with the recent report of the Secretary-General submitted pursuant to that resolution (S/2008/173), preparations for a transition from the Commission to the Office of the Prosecutor of the Special Tribunal have continued. The fact that the Commissioner is also the Prosecutor-Designate will ensure a coordinated transition between the two institutions.

58. When the Prosecutor is sworn in, he will review all the materials transmitted to him by the Commission and the Lebanese judicial authorities. Following the review, he may direct that additional investigations be conducted before being satisfied that the admissible evidence justifies the filing of an indictment. Only then will he submit an indictment for confirmation by the pretrial judge. Experience has taught that this process is not instantaneous.

B. Preparatory steps

59. The Commission's electronic data, documentary holdings and physical evidence are being prepared for the transition to the Office of the Prosecutor of the Special Tribunal for Lebanon. Those preparations include organizing the physical transfer of evidentiary materials in accordance with applicable international standards.

60. The Commission has also assumed custody of all physical items that were seized from various locations relevant to the Hariri investigation and is making an inventory of them. The Commission is cooperating with the Prosecutor General and the investigative judge in the Hariri case in preparing the transfer of documents and exhibits currently in the possession of the Lebanese authorities to the Tribunal.

61. The transition raises untested legal issues at the crossroads of Lebanese and international criminal laws, which the Commission has begun to review.

VIII. Conclusion

62. The Commission's investigation must continue to be guided solely by the facts and by the evidence. Its conclusions cannot rely on rumour or assumption; they must be supported by reliable evidence that will be admissible before a tribunal.

63. The search for justice must be allowed to follow its course. As the preparatory steps for the Special Tribunal for Lebanon continue, the Commission remains committed to that search with vigour and determination.